

OPEN SPACE COUNCIL
MINUTES
Legislative Hall
Senate Hearing Room, Second Floor
Dover, DE
January 10, 2006
9:00 a.m.

ATTENDANCE

Council Members

Lynn W. Williams, Chairperson
Nathan Hayward III
Harvey Marvel
John Mackenzie, Ph.D.
William Powers, Jr.
Representative Robert J. Valihura, Jr.
Donald Lynch
Paul Boswell, Esq.
D. Wayne Holden
Senator Anthony DeLuca

Ex-Officio Members

Charles Salkin	State Liaison Officer
Michael Scuse	Department of Agriculture
Tim Slavin	Department of State

Advisory to:

John A. Hughes,	Department of Natural Resources & Environmental Control
<u>Staff</u>	
Karley Barnes	DEDO
Karen Bennett	Fish & Wildlife, DNREC
Eileen Butler	Parks & Recreation, DNREC
Phil Carpenter	Parks and Recreation, DNREC
Phil Cherry	Cabinet Secretary's Office, DNREC
Matt Chesser	Parks and Recreation, DNREC
Tim Kaden	Parks and Recreation, DNREC
David Small	Cabinet Secretary's Office, DNREC
Austin Short	Department of Agriculture
Michael Valenti	Department of Agriculture
Ron Vickers	Parks and Recreation, DNREC
Bill Whitman	Fish & Wildlife, DNREC
Bob Zimmerman	Cabinet Secretary's Office, DNREC
Lee Ann Walling	Governor's Office
Rose Ryödi	Parks and Recreation, DNREC

I. Call to Order/Announcements

The meeting was called to order by Mrs. Lynn Williams, Chairperson, at 9:00 a.m. A quorum was present.

There being no announcements, Mrs. Williams proceeded with the Meeting.

II. Review of Minutes of the December 06, 2005 Meeting

The minutes of the December 06, 2005 meeting of the Open Space Council were presented for review. It was moved and seconded to approve the minutes as presented.

III. State Resource Areas Maps

Mr. Bob Zimmerman, Office of the Secretary, Department of Natural Resources and Environmental Control (DNREC) (the Department), asked Council to look at materials provided.

- The Delaware Land Protection Act, passed in 1990, provided for the State to designate State Resource Areas. These maps were to be reviewed/revised every five years. This is the first comprehensive revision to the maps. The Act also provided for the maps to be provided to the Counties for inclusion in their Comprehensive Land Use Plans. The Counties would then develop overlay zones or environmental performance standards for these areas. This coordination with the Counties has not taken place. Each County has varying levels of environmental ordinances in place. The most comprehensive is contained in New Castle County's Unified Development Code and its relation to Critical Natural Areas.
- Mr. Zimmerman said that Chapter 73 sets up the Natural Areas Preservation System as a separate advisory council that looks and advises the Department on the identification of natural areas. This Council has been meeting to update the natural areas maps and is now ready for the public's review.
- The Department decided to bring forward the proposed revised Natural Areas maps and State Resource Areas maps at the same time since they overlap. The public review process would take place at the same time.
- The Department is basing the revisions of the maps on better information and science- what are the resources and areas that need to be protected in some manner. The type of protection is also being discussed- whether acquisition by the State or other conservation groups or protection through County action.
- The Department will make sure that there is a sound scientific basis for the identification and protection of these resources.
- The Department (DNREC)/Fish & Wildlife, last year, put out for public comment the *Wild Life Action Plan (WLAP)* to provide an identification of key habitats of concern for preservation of wildlife and measures needed to protect these areas. This is an example of one type of scientific report used in the mapping process.
- The Department is also analyzing what lands are already protected and looking at connections.
- The Land Protection Act states that the Counties are to come forward with protection measures. DNREC is willing to work with the Counties to provide technical assistance on this. Additionally DNREC will be looking at the types of landowner incentives for

resource protection that are available now and making sure landowners are aware of their options.

- DNREC is looking to maintain a schedule of completing the process of maps, public workshops and recommendations by March in order to get the maps to the Counties in a timely manner.
- What we are presenting today is a first draft of lands that may be considered for protection.

Mr. Ron Vickers explained the process used to date for the draft maps and showed the Council different color-coded maps.

- The information used in updating state resource area maps was taken from a variety of different sources including: 2002 aerial photography, 1937 aerial photography, existing State Resource Area maps, existing Natural Areas maps, Green Infrastructure- Natural and Recreation Lands layer map, rare plant and animal data, significant natural community data, geologic sites, archaeological sites, forest and riparian buffer mapping project, qualitative forest research project, protected lands owned in fee simple or conservation easement by public and private conservation groups, agricultural preservation easements, recently proposed developments.
- The 2 major mapping layers that were used were the Green Infrastructure map and the Wildlife Action Plan maps. The Wildlife Action Plan was completed in the fall of 2005 and accepted by the U.S. Fish & Wildlife Service as representing key habitats throughout the state that will provide for the protection and sustainability of wildlife species in Delaware.
- Green Map: approximately 425,000 acres of land; based on the Green Infrastructure map and Wildlife Action Plan map; draft version of proposed State Resource Area map.
- Red Map: approximately 182,000 acres of land; natural areas are considered the best representative habitats, rare species locations, research and education sites, significant archaeological and geological sites; draft version of proposed Natural Areas map to be discussed by the Natural Areas Advisory Council.
- Light Blue Map: approximately 120,000 acres; based on potential acquisition priorities of 4 land managing agencies
- Dark Blue Map: approximately 220,000 acres; public and private conservation agency/organization lands held fee simple or conservation easements and agricultural preservation easements
- Light Blue Crosshatch Map: approximately 265,000 acres; current State Resource Area map

Discussion followed based on what lands were included and whether this was based on tax parcels or zoning. The response was that the maps were drawn not based on tax parcels or zoning.

Mr. Powers expressed concern over the amount of acreage on the proposed SRA map and the value of individual parcels based on whether it was green or not. He believed the green area was too big.

Mrs. Williams requested that the Department explain the maps are based on the natural resources, not on whether it could be bought by the State. As the process goes forward it would

be determined as to any impact on the value of land. This would be determined as it goes through the public process with the Counties.

Mr. Hayward was concerned that if the state held on to too much land, there would be an outcry from investors, developers, the public and some elected officials. He said of the 1.3mil acres in DE, 220,000 acres, approximately 15%, is protected land. We are sending the wrong message by putting emphasis on the additional areas we want to protect. If Council agrees to these maps, it sends a message that it wants to protect more than double the current acreage that is already protected in Delaware. He stated he cares deeply about land protection but the Council must adhere to the fact that it runs the risk of alienating and losing support for the 425,000 acres. Ten years ago, land was relatively cheap in Sussex County. Today it is challenging to purchase the best acreage. The way the maps are shown, he said, could be wrongly perceived by the public – most people out there do not understand the State Resource designation. Do we think it is appropriate to protect over 1/3 of the land mass of Delaware?

Mrs. Williams stated she did not think that is what was said. We are targeting areas with natural resource concerns and it does not mean we would buy all of it.

Senator DeLuca noted that: If all of the agency-targeted areas were already protected, wouldn't staff still be looking for other areas to protect? We would never be able to afford to buy all of the green area. We do not have enough funds to protect it all.

Mr. Vickers stated that the intent of the green map was to show what areas contained resources worthy of protection. It was not meant for the State to purchase all of the green. In 15 years of the Open Space Program about \$250,000 worth of land was protected through acquisition or easement. This was a little over 44,000 acres.

Secretary Hughes noted that this is not just about land acquisition. He pointed out that Delaware's rate of development in 2005 is 9th in the nation.

Mr. Salkin noted that these plans were only for technical information and prepared from a technical, scientific and geographic perspective to generate Council's discussion. The most important point to be made is that all of the green areas on the map that are not already protected through fee simple ownership or easement can be developed and are available for development today and will be available to be developed under the comprehensive plans that were adopted. What the program intended to do in 1990, when the Land Protection Act was enacted, and what today's effort is, is to focus on and recognize the fact that the state will not buy all of these lands. The Department is putting emphasis on lands that are vulnerable. Many of these lands will be impacted by some level of development. When the state agencies have the resources and the opportunity, they will focus on areas that they wish to acquire. The Department hopes for the support of the Counties with their development of environmental overlay zoning to help us protect the lands that we can't buy. The Department hopes there is sensitivity to the resource areas when lands are developed.

Mr. Hayward said the Council should consider the message it sends that despite the protected land it owns today it still wants more acres. This message may be subtle to understand but 15% of land is protected today. In the next 5-10 years Council may want to add another 3-5%.

Dr. Mackenzie noted that he teaches GIS mapping at the University of Delaware and stated that the maps, as presented, were not ready for a public presentation. He suggested the Department hire marketing consultants to assist with producing a professional package. The Department must bring in focus groups to sharpen the image by enhancing the positive aspect of the maps. He said plans should have a visual impact, emphasized by highlighting the image and bringing out what is developed. These color-coded maps have a huge cognitive impact and the Department must arrange the choices of colors carefully. He said emphasis should be put on how and why it is important to preserve these lands. He suggested using focus groups to review the maps and offered his university students as one such group.

Ms. Walling noted there is a limited window of opportunity to work with the Counties to incorporate this in this round of Comprehensive Land Use Plans and if we miss that opportunity, then it is another five years before we can work to place it in the plans. She noted there should be a way to work with the Counties to incorporate this in a collegial way and to emphasize that it doesn't mean you can't develop these areas. It means you need to look at them from a more environmentally sensitive perspective.

Secretary Hughes stated he understands there is a big difference between presenting this to the Council which understands the concept as opposed to presenting it to the general public. Based on the discussion and concerns raised by the Council he would like to direct staff to refine the maps and work on a communication strategy before moving forward.

Mrs. Williams asked if the public workshops should still move forward and would we be able to work with the Counties in a timely manner?

Mr. Zimmerman believed we still could move forward in a timely manner and revise the maps, provide for public input and then return to the Council for their recommendation. We were not asking for approval of these maps as presented.

Representative Valihura appreciated the work that had gone into the maps so far and was surprised to see that about 150,000 acres of additional land was considered important resource land needing protection.

Mr. Holden asked for clarification regarding one provision in the Land Protection Act that noted the each County may be eligible for \$100,000 to implement some type of regulation and if they did not, then the money was not available or would have to be returned.

Mr. Salkin noted that when the Land Protection Act was passed in 1990 there was no law in place requiring a state planning office to review and approve land use plans. Now there is a law requiring certification of the plans by the Office of State Planning Coordination. Therefore, the idea of the funding to each County to help implement the law may not be as relevant.

Secretary Hughes noted that we will work with the Counties to implement the law.

Representative Valihura noted that Kent County appears to be moving ahead with some type of land use proposals for the coastal zone area that may affect some of the mapped green areas.

A motion was made to work on revising the maps and improving a presentation before moving forward with a public process. It was seconded and passed.

IV. Open Space Program Funding

Secretary Hughes said the cost of property in Delaware has greatly increased eroding the \$9 million buying power that the Open Space Council receives from the legislature each year. The Open Space Council should find ways and means to increase its resources.

A series of options were presented for discussion

Options:

- Buying and reselling land at a profit – Secretary Hughes said this was not an option as the Open Space Council is not permitted to buy and resell land. Only the legislature has that authority to divest land.
- Investing the Land and Water Conservation Trust Fund in the same manner as the State Pension Fund- currently the pension fund return is about 11%; suggest talking with members of the pension advisory board.
- Bond options – in 1991 and in 1993 \$15 million of bonds were sold to fund the acquisition projects; discussed whether selling bonds is a good idea now; staff to discuss request with appropriate legislators.
- Current funding obligations- the current funding commitment on multi-year payments is about \$7.0 million out of next year's \$9.0 million; Representative Valihura and Senator DeLuca suggested the Open Space Council request an additional \$7.0 million to make a total of \$16.0 million for fiscal year 2007.

Mrs. Williams said staff should chart out various ways of investing and acquiring more funds and expects a fully developed plan by the next meeting.

A motion was made to work on a plan to acquire more funds to enable the Council to purchase targeted lands and to bring final report to the next Open Space Council meeting. It was seconded and passed.

V. Council Membership

According to legislation signed on 7/2/04 and in effect until 7/2/06, Council membership increased from 9 to 11. Council reverts to 9 members thereafter. Based on discussion of the Council it was agreed to request to the Governor that the Council membership remain at 11.

VI. Next Meeting

The next meeting will be held on Tuesday, March 14, 2006 at 9:00 a.m. at Legislative Hall in the Senate Hearing Room.

VII. Adjournment

The meeting adjourned at 11:30 a.m.

Respectfully submitted, Rose Ryödi